

September 20, 2023

Office of Internet Connectivity and Growth,
National Telecommunication and Information Administration
U.S. Department of Commerce
1401 Constitution Avenue NW, Room 4887
Washington, DC 20230

Re: *Notice; Request for Comments by the National Telecommunications and Information Administration (NTIA) regarding Limited Applicability Nonavailability Waiver of the Buy America Domestic Content Procurement Preference as Applied to Recipients of Broadband Equity, Access, and Deployment Program*

INTRODUCTION:

The National Rural Electric Cooperative Association (NRECA) submits these comments in response to the National Telecommunications and Information Administration (NTIA) Notice and Request for comments (Notice) on the proposed limited applicability nonavailability waiver that would provide recipients of federal financial assistance under NTIA's *Broadband Equity, Access, and Deployment Program* (BEAD) a limited exemption from application of the Build America, Buy America (BABA) Preference as applied to limited classes of manufactured products and construction materials. NRECA supports NTIA's proposal of a limited applicability nonavailability waiver, providing recipients of federal financial assistance under BEAD a limited exemption from application of the Buy America Preference as applied to limited classes of manufactured products and construction materials.

The proposed waiver will (1) promote broad participation in the BEAD Program, (2) ensure that BEAD Program awardees will have access to the manufactured products and construction materials necessary to fulfill their obligations under the BEAD Program, (3) allow funding recipients to continue to provide economic opportunity through innovation and timely deployment of broadband infrastructure,

which is recognized to expand job opportunities, and (4) support the timely development of critical domestic public infrastructure.

NRECA members are dedicated to improving the communities in which they serve and are active in rural economic development efforts. More than 200 electric co-ops are working toward meaningful and diverse solutions to provide broadband services, which can help bridge the digital divide and jumpstart local economies. Another 100 to 200 are exploring the feasibility of providing broadband, either on their own or through partnerships. This cooperative commitment is vital for some 30% of rural Americans that still lack access to broadband, compared to about 2% in urban areas. NRECA, on behalf of its members, strongly supports implementation of a waiver of the Build America, Buy America provisions for the reasons discussed below.

COMMENTS:

Congress passed the Build America, Buy America Act which includes strong and permanent domestic sourcing requirements across all Federal financial assistance programs. The Act includes, among other things, Buy America Domestic Content Procurement Preference provisions (“Buy America Preference”), pursuant to which all construction materials must be produced domestically and the cost of the domestically produced components of any manufactured product must be greater than 55 percent of the total cost of all components of the manufactured product. Under the IIJA, Federal financial assistance projects for infrastructure must comply with domestic content procurement preference requirements established in the Build America, Buy America Act, set out at The Infrastructure Investment and Jobs Act of 2021 (IIJA) sections 70901-70952. BABA’s domestic content procurement preference applies to all iron and steel, manufactured products, and construction materials used for infrastructure projects under an award.

Given this mandate, Department of Commerce (DOC) staff sought to “obtain a clear view of the broadband supply chain,” holding a number of meetings with stakeholders. This initial broadband industry assessment made apparent that some construction materials and manufactured products required for broadband infrastructure deployments, as detailed further below, are presently not available in the quantity or quality needed for the BEAD Program to achieve the timeframes established by the IIJA. Moreover, with over \$42 billion in funding allocation to states announced on June 26, 2023, requiring supplies to be available on these short timeframes, there will be little time permitted to address supply chain issues.

Authority to grant a waiver is clear:

Under BABA Section 70914(b), DOC has authority to waive the application of a domestic content procurement preference when (1) the application of the preference would be contrary to the public interest, (2) the materials and products subject to the preference are not produced in the United States at a sufficient and reasonably available quantity or satisfactory quality, or (3) inclusion of domestically produced materials and products would increase the cost of the overall project by more than 25 percent. Section 70914(c) provides that a waiver under Section 70914(b) must be published by the agency with a detailed written explanation for the proposed determination and provide a public comment period of not less than 15 days. NRECA agrees with the NTIA analysis that it has the authority to enact a waiver and highly encourages NTIA move forward with a waiver as soon as possible to provide clarity to and needed flexibility for applicants.

Need for a waiver is clear:

The Notice and the NTIA’s own assessment of broadband supply chain issues makes the clear and compelling case for a waiver to address the issue of many of the manufactured products and some of

the construction materials required for last mile infrastructure deployment that are not available in the quantity or quality needed for the BEAD grant program on the timeframes established. As NTIA stated in the Notice, it is clear from hundreds of stakeholder meetings that some construction materials and manufactured products required for broadband infrastructure deployments are not presently available “in the quantity and quality needed for the BEAD program to achieve the timelines established by the IJJA.” Electric cooperatives want to deploy networks as quickly as possible and certainly within the timeframes established in the BEAD program. That cannot be accomplished without a robust waiver. The waiver is a reasonable and measured approach to address widespread supply chain issues and the inadequate supply of domestically manufactured equipment facing the communications industry, while also recognizing national security and cyber security concerns.

NRECA supports the proposed limited, general applicability, nonavailability waiver:

NRECA supports the proposed partial waiver for construction materials. Our member co-ops use these materials for the vast majority of their last mile networks; and to build and deploy these networks within the timeframes prescribed a waiver to purchase foreign materials is imperative to ensure sufficient supply. As the Notice highlights, given the anticipated peak demand for construction during the program rollout, particularly for the small ISPs that NRECA represents, purchasing flexibility will help meet that demand. NRECA also supports the proposed waiver of the Buy America Preference for certain key electronics in BEAD program projects, particularly semiconductors, and Optical Network Terminals, and Units both on-site and remote. We also support the limited waiver for enclosures that sourced outside the U.S.

Reporting burdens for small businesses should be kept to a minimum:

The Notice states that BEAD Program recipients are responsible for compliance with BABA reporting requirements under the waiver. While reporting of this information is reasonable and will provide valuable information that can guide future programs, NTIA should seek to limit the reporting burdens on small businesses. All but three of NRECA's 900 member cooperatives are small business entities as classified by the Small Business Administration. Placing additional burdens on small businesses that provide broadband service will increase the costs for them to participate and potentially discourage participation in the program. Therefore, minimizing reporting requirement burdens is essential. Further, NTIA should confirm that the onus is on equipment manufacturers, rather than awardees, to certify which equipment and materials meet the domestic content requirements and which fall under the BABA waiver discussed herein.

CONCLUSION:

A waiver is necessary to not only address the shortage of domestically produced equipment and materials, but to ensure that BEAD recipients are able to deploy their broadband buildouts in a timely manner that complies with the prescribed program timelines. NRECA supports the enactment of the waiver with the recommendations discussed above and appreciates the opportunity to provide our views.

Respectfully submitted,

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